

Message Text

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ACTION EUR-25

INFO OCT-01 ADP-00 H-02 L-03 JUSE-00 TRSE-00 SEC-03 SSO-00

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FOR EUR/ CE SUTTERLIN; EUR/ F SAVAGE; H MACKENZIE; L MCDOWELL

PASS JUSTICE PETERSEN; TREASURY MORGAN; SEC POLLACK

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SUBJ: JUDICIAL ASSISTANCE TREATY: SUMMARY OF TREATY TEXT

REF: BERN 2084

1. FOLLOWING IS BRIEF SUMMARY OF TREATY TEXT WHICH IT IS
SUGGESTED SHOULD BE AFFIXED TO COPIES OF TREATY TEXT IF DIS-
TRIBUTED TO PRESS AND OTHER INTERESTED GROUPS:

SUMMARY OF US- SWISS JUDICIAL ASSISTANCE TREATY

THE US AND SWITZERLAND SIGNED A TREATY ON MUTUAL ASSISTANCE IN
CRIMINAL MATTERS AT BERN ON MAY 25, 1973. THE TREATY CONTAINS
41 ARTICLES, GROUPED IN 9 CHAPTERS, AND A SCHEDULE LISTING 35
CATEGORIES OF OFFENSES TO WHICH THE TREATY IS APPLICABLE. THE
TREATY IS SUPPLEMENTED BY 6 EXCHANGES OF LETTERS INTERPRETING
CERTAIN LANGUAGE USED IN THE PROVISIONS OF THE TREATY.

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THE TREATY WAS NEGOTIATED OVER A PERIOD OF FOUR YEARS WITH THE US BEING REPRESENTED BY REPRESENTATIVES OF THE DEPARTMENT OF STATE, THE DEPARTMENT OF JUSTICE, THE DEPARTMENT OF THE TREASURY AND THE SECURITIES AND EXCHANGE COMMISSION. THE EXTENDED DISCUSSIONS WERE PROMPTED BY THE NEED TO BETTER UNDERSTAND THE RESPECTIVE AMERICAN AND SWISS LEGAL SYSTEMS AND DEVISE WAYS IN WHICH THE TWO COUNTRIES COULD WORK TOGETHER IN PROVIDING ASSISTANCE TO EACH OTHER IN CONNECTION WITH CRIMINAL MATTERS.

THE TREATY IS A PIONEERING EFFORT. IT REPRESENTS THE FIRST MAJOR AGREEMENT FOR THE US WITH ANY COUNTRY IN THE AREA OF MUTUAL ASSISTANCE IN CRIMINAL MATTERS. FOR SWITZERLAND, IT REPRESENTS THE FIRST AGREEMENT OF THIS TYPE WITH A COUNTRY HAVING AN ANGLO-SAXON SYSTEM OF LAW. A NUMBER OF THE PROVISIONS OF THE TREATY ARE BASED ON PROVISIONS IN THE EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS TO WHICH SWITZERLAND IS A PARTY.

IN GENERAL, THE TREATY PROVIDES FOR BROAD ASSISTANCE BETWEEN THE US AND SWITZERLAND IN CRIMINAL MATTERS. THIS INCLUDES ASSISTANCE IN LOCATING WITNESSES, THE OBTAINING OF STATEMENTS AND TESTIMONY OF WITNESSES, PRODUCTION AND AUTHENTICATION OF BUSINESS RECORDS, AND SERVICE OF JUDICIAL OR ADMINISTRATIVE DOCUMENTS.

THE TREATY ALSO PROVIDES FOR SPECIAL ASSISTANCE WHERE ORGANIZED CRIME IS INVOLVED. IT WAS FELT THAT ORGANIZED CRIME WITH ITS WIDESPREAD DANGERS TO SOCIETY AND ITS INTERNATIONAL SCOPE OF OPERATIONS JUSTIFIES THE NEEDS FOR SPECIAL LEGAL ASSISTANCE.

THE TREATY ESTABLISHES AN OBLIGATION TO FURNISH ASSISTANCE IN CONNECTION WITH INVESTIGATIONS OR COURT PROCEEDINGS INVOLVING CERTAIN TYPES OF OFFENSES. COMPULSORY MEASURES ARE GENERALLY REQUIRED TO BE USED ONLY IN CONNECTION WITH MATTERS WHICH ARE CONSIDERED TO BE CRIMINAL OFFENSES IN BOTH COUNTRIES AND ARE LISTED IN THE SCHEDULE TO THE TREATY. ONE EXCEPTION TO THE FOREGOING APPLIES TO ORGANIZED CRIME CASES WHICH ARE COVERED BY SPECIAL PROVISIONS.

TAX CRIMES ARE EXCLUDED FROM THE TREATY AND ARE GOVERNED EXCLUSIVELY BY THE CONVENTION OF MAY 24, 1951, BETWEEN THE US AND SWITZERLAND ON THE AVOIDANCE OF DOUBLE TAXATION EXCEPT IN CERTAIN LIMITED OFFICIAL USE

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ORGANIZED CRIME SITUATIONS.

SEVERAL PROVISIONS OF THE TREATY DEAL WITH THE SWISS CONCEPT OF BANKING SECRECY. THIS IS A COMPLICATED SUBJECT INVOLVING PROVISIONS OF SWISS LAW AND PRACTICE. THE TREATY OVERCOMES BANK SECRECY UNDER CERTAIN CONDITIONS IN SPECIFICALLY DELINEATED CASES. CAREFUL ATTENTION WAS PAID AS TO HOW SWISS BANK INFORMATION

COULD BE MADE AVAILABLE TO, AND USED BY, THE UNITED STATES IN CONNECTION WITH SERIOUS CRIMES IN THE UNITED STATES.

THE TREATY DOES NOT CREATE ANY NEW CRIMES IN EITHER COUNTRY. IT IS LIMITED TO PROVIDING TO EACH COUNTRY ADDITIONAL EVIDENCE AND INFORMATION FOR USE BY IT IN INVESTIGATING OR PROSECUTING THE CRIMES ESTABLISHED BY ITS DOMESTIC LAW. IT IS INTENDED TO ALLOW EACH OF THE COUNTRIES TO OVERCOME SOME OF THE PROBLEMS PRESENTED IN OBTAINING INFORMATION OR EVIDENCE CONCERNING ACTIVITIES TAKING PLACE OUTSIDE OF THAT COUNTRY IN FURTHERANCE OF CRIMES COMMITTED IN THAT COUNTRY.

IT IS EXPECTED THAT MOST REQUESTS FOR ASSISTANCE UNDER THE TREATY WILL BE EXECUTED BY APPROPRIATE AUTHORITIES IN THE TWO COUNTRIES AT THE REQUEST OF THEIR RESPECTIVE DEPARTMENTS OF JUSTICE.

THE SIGNING OF THIS TREATY BY THE US AND SWITZERLAND IS ANOTHER EXEMPLE OF CLOSE AND EFFECTIVE COOPERATION BETWEEN THE TWO COUNTRIES IN MATTERS OF MUTUAL INTEREST. OTHER NOTEWORTHY RELATED AREAS OF CLOSE US- SWISS BILATERAL COOPERATION CONCERN THE ILLEGAL NARCOTICS TRADE AND INTERPOL ACTIVITIES.

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